



NEW WORKPLACE LAWS

SOME THINGS ARE GETTING BETTER!!

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PAID FAMILY LEAVE EXTENDED

- Wage replacement
- Applies if employer pays into State Disability Insurance (SDI)
- Previously 6 weeks to care for seriously ill family member or for child bonding
- As of July 1, 2020, extended to 8 weeks
- Up to 60-70% of gross wages
- Governor proposal extending Paid Family Leave (PFL) for child bonding to 6 mo. and increase wage replacement for low wage workers to up to 90% of gross wages by 2022

AB 5 – Employee v Independent Contractor

- Codification of 2018 landmark decision by Ca Supreme Court
- Is "employee" unless employer can prove:
 - A. the person is free from control & direction of employer; AND
 - B. the person performs work "OUTSIDE USUAL COURSE" of employer's business; AND
 - C. the person is engaged in independent trade or profession
- Differences: minimum wage, overtime, unemployment, workers' comp, state disability insurance, anti-discrimination law coverage, employer Social Security contributions, Medicare & Medicaid contributions

AB 2257 – AB 5 Exceptions/Exclusions

- Musicians, photographers, digital content aggregators, fine artists, freelance writers, translators, editors, illustrator, cartoonists
- Insurance underwriters, consultants, animal services, licensed landscape architects, real estate appraisers & home inspectors
- Business-to-business relationships between 2 or more sole proprietors
- **BUT** still limits – written contract, independent business, no employer control, etc. (Borello multi-part test)

AB 1867 – 2 weeks supplemental sick leave

- Federal law provides employers with **less than 500 employees** must provide up to 2 weeks COVID-related sick leave
- Intended to close the gaps between FFCRA and Governor Order giving paid sick leave for food sector workers
- Applies to all private employers with **over 500 employees** and to public and private employers of first responders and health care employees who opted not to provide leave under the federal law
- Must begin providing this leave no later than September 19, 2020.
- Under this new California law, employees who must leave their home to perform work are entitled to COVID-19 supplemental paid sick leave if they are unable to work when they are:
 - Subject to a federal, state, or local quarantine or isolation order related to COVID-19;
 - Advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or
 - Prohibited from working by the employer due to health concerns related to the potential transmission of COVID-19.
- Also: handwashing every 30 minutes and as needed for **food sector workers**

SB 1383 – California Family Leave Act Extended to Employers of 5 or More

- Siblings, grandparents, grandchildren
- 12 weeks each to both parents of a child
- Does not permit an employer to refuse reinstatement of “key employees”
- Qualifying reason includes covered active duty for employee or spouse

	CFRA/FMLA (Job Protected)	PFL (No Job Protection)	PDL (Job Protected)	NPL (Job Protected) NO
Employers Covered	50 or more employees in 5 mile radius of worksite	One or more (employee pays, employee gets)	Five or more employees	20 or more employees
Employee Eligibility	Worked 1,250 hours in prior 12 months	Once employee earns \$300 in base period for fund contribution	Immediate as necessary	Worked 1,250 in prior 12 months
Reason for Leave	Employee serious health condition; seriously ill family member care; bond with newborn or newly placed adopted or foster child	Care for seriously ill family member; bond with a child within 1 year of birth, foster care or adoption placement; or participate in qualifying active duty exigency	Disability due to pregnancy, childbirth or related medical condition	Bond with a child w/in 1 year of birth, adoption or foster care placement
Length of Leave	12 weeks in 12-month period	6 weeks in 12-month period	Up to 4 months	Up to 12 weeks
Paid or Unpaid	Unpaid, may run concurrent with other paid leave	Partial wage replacement	Unpaid, may run concurrent with SDI for partial wage replacement	Unpaid, employee can use vacation, paid sick time
Continued Health Coverage	Yes	No	Yes	Yes

AB 685 - Notice to Workers of Exposure to Covid 19

- Within 1 day of receiving notice of potential exposure, employer must:
 - Provide written notice to all employees, union, and employers of subcontracted employees exposed at worksite
 - Provide notice of benefits available for COVID-19 sufferers to workers and union, incl. worker's comp, paid sick, state sick leave, supplemental or negotiated paid sick leave, and company's anti-harassment, anti-discrimination, and anti-retaliation policies
 - Notify employees, union, and employers of subcontracted employees of employer's disinfection and safety plans to address the problem
- Does not apply to health facility or health care employees
- Fast tracks timeline for Cal OSHA's issuance of serious citations

AB 2043 - CalOSHA Covid-19 Reporting for Agricultural Workers

- CalOSHA shall:
 - 1. Disseminate information, in English and Spanish, on best practices to prevent COVID-19 infection, aimed at agricultural workers
 - 2. CalOSHA shall investigate and make available on its website information about ag workers & COVID-19 infections
 - 3 CalOSHA may enforce COVID-19 enforcement guidelines where necessary in agricultural industry

SB 275/AB 2537 - Stockpiling 90 Day Supply of All PPE for Essential Workers

- The **State** will create 90-day stockpile of Personal Protective Equipment (PPE) for health care and essential workers
- As of 1/1/23, **health care employers** must stockpile 45-day supply of PPE for all employees
- Department of Industrial Relations can impose penalties
- Advisory Committee of representatives of Skilled Nursing Facilities, Doctors, Unions, to make recommendations re PPE stockpiling

AB 9 – DFEH Statute of Limitations Extended from One Year to Three Years

- Complaints about sexual harassment, and/or discrimination in employment and/or discrimination in housing extended from 1 year from violation to 3 years from violation
- (especially because coming forward re sexual harassment may take longer)
- (for personal injury is 2 years, for sexual assault is 10 years, for fraud is 3 years, for contract disputes is 4 years)

AB 1947 – More Time to File Retaliation Charge with the Labor Commissioner

- Time to file charge with Labor Commissioner for wages/hours, etc. violations is three years, or four years (if deliberate violations)
- But only 6 months to file charge about discharge or discrimination flowing from complaining about any such violation
- This law extends that 6 months to 1 year

- AND

- Whistleblowers may recover attorney's fees if claim proved

SB 778 – Sex Harassment Laws Applied to Small Employers

- Law already mandates all employers of 5 or more employees to provide:
 - 2 hours of classroom or effective interactive training about sex harassment to all supervisors, and 1 hour to all non-supervisory employees every 2 years, AND within 6 months of assuming positions (supervisory or non-supervisory)
- This new law extends deadline to get it done to January 1, 2021
- See dfeh.ca.gov for more

SB 142 – Lactation Rights Expanded

- Employers must provide mothers w/ break time each time there is a need to express breast milk
- Lactation room must:
 - Be safe, clean, and free of hazardous materials;
 - Contain a surface to place a breast pump and personal items;
 - Contain a place to sit; and
 - Have access to electricity or alternative devices needed to operate an electric or battery-powered breast pump.
- Access to sink with running water and refrigerator suitable for storing milk.
- Where multipurpose room is used for lactation, the use of the room for lactation shall take precedence
- Rest break penalty (LC 226.7); also civil penalty of \$100 for each day denied
- No discipline or retaliation for seeking this right
- Employer must provide posted policy
- (Employers with less than 50 employees may seek exemption)

AB 1876 – Expanded Earned Income Tax Credits for Low Wage Workers

- Earned Income Tax Credit is a tax credit for low wage workers
- California expanded it from \$400 million available to \$ 1 billion available
- Larger credit AND now covers more workers, including undocumented workers who file tax returns
- 2 of every 3 who will benefit are “essential workers”
 - Delivery drivers, building service workers, health care workers, food service workers, etc.

AB 749 – Settlement Agreement Limitations

- Prohibits, and makes void, settlement agreements which include ‘no future employment’ clause
 - Except if good faith determination there was sexual harassment or sexual assault
- Only protects an “aggrieved person”, defined as someone who has filed a claim against an employer
- Does not protect a wrong doer who has filed no charge or grievance about termination
- Still allows for severance agreements and decisions not to rehire or end employment relationship due to legitimate, non-discriminatory reason(s)

SB 188 – CROWN Act

(Create a Respectful & Open Workplace for Natural Hair)

- FEHA prohibits discrimination based on race or racial appearance
- CROWN Act expands definition of “race” to explicitly cover “protective hair styles”, including “naturals”, and “braids, twists, & locks”
- CROWN Act says to discriminate based on these hair styles has disparate impact on Black employees and is therefore illegal
- “continuing to enforce a Eurocentric image of professionalism through purportedly race-neutral grooming policies....is in direct opposition to equity and opportunity for all.”

SB 688 – Recovering Contract wages

- If employer does not pay wages set forth in an individual employment contract (not a Collective Bargaining Agreement)
 - Then Labor Commissioner may seek recovery of the unpaid wages
 - To challenge LC's finding, employer must post undertaking for amount due
 - Undertaking goes to LC for distribution to workers if employer loses
 - So employer cannot stall paying if it loses

SB 973 – Wages/Benefits Reporting – (1)

- DFEH enforces laws prohibiting discrimination based on race, religious creed, color, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, familial status, disability, veteran or military status, genetic orientation, and/or sexual orientation
- To aid in enforcing these anti-discrimination laws, this law gives DFEH right to collect wage information to eliminate wage disparities & discrimination

SB 973 – Wages/Benefits Reporting – (2)

- Reporting Required

- 1. for all employers with 100 or more employees which file EEO-1 with Federal EEOC
- 2. list of employees by job classification, wages paid, membership in protected classes
- 3. reports to be maintained by DFEH for 10 years
- 4. aggregated information will be available to public, but no information about any specific individual – privacy rights protected

SB 1159- First Responders' Workers Compensation Presumption

- If **first responder** (firefighters, cops, emergency medical technicians, paramedics, etc) or direct contact health care workers contracts Covid-19, presumption is that it is "work related" and covered by Workers' Compensation insurance
- If **any employee** contracts Covid-19, presumption applies if "outbreak" at workplace
 - (5 or more within 14 days if 5-100 employees, or 5% of employees if more than 100 employees)
- Effective retroactively to July 5, 2020, but expires January 1, 2023

(some useful worker comp facts)

- 700,000 employers buy worker compensation insurance from 200 insurance companies
- 800,000 workers/year receive benefits
- 2020: 40,500 claims for Covid-19 “work related” but 11,100 rejected based on negative tests
- Covid-19 expected cost is \$2 billion w/average claim of \$29,000

AB 276 – No Penalties for DC Plan Withdrawals

- If you have a DC (Defined Contribution) Retirement Plan (401k...)
 - Federal law allows taking loan to self for up to \$100,000
 - If you have lost work or have financial problem due to Covid-19 Crisis
 - And NO tax penalty for this early withdrawal
- This law conforms California law to this Federal law

AB 2992 – No Adverse Job Action for Crime Victims Taking Time Off

- Expands job protection for workers whose immediate relatives are victims of crimes, in particular violent crimes
- Worker may take emergency time off to deal with effects of domestic violence, sexual assault, homicide, etc., at any time with no discharge/discrimination/retaliation
- Worker must provide documentation before or after the time off to substantiate crime and need for time off

AB 3075 – Successor Employer Liability

- Provides for new online resource called California Business Connect, where all doing business in State shall file full disclosure statements about people who own, operate, manage the company – open to public access at all times
- Provides successor to company which owes judgment/penalties for Labor Code violations shall be liable for these debts
 - Defines “successor” very broadly: uses same facilities, or has same owners or managers over Human Resources, or same managing agent over Human Resources, or in same business w/family relationship between any present owner, director, officer of both

SB 729 – Limits on At Home Work Penalties for Missed Breaks

- Usually, employees can collect money penalties from employer if no rest breaks and/or lunch break
- But, if employee working at home (3/19/20-12/31/22) due to 'shelter in place' orders due to Covid-19 Crisis, no such penalties allowed

AB 3216 – Recall Rights Expanded to More Workers Affected by Covid-19 Lay-offs

- Displaced Janitor Opportunity Act rights expanded to require employers to give first right to recall and jobs re-opened in/after Covid-19 Crisis to
 - Hotels, private clubs, event centers, airport hospitality, airport services, security services
- Right of recall also expanded to successor employers for 6 months after take-over
- Rights are detailed – time limits re prior work (6 of 12 months), 5 days to answer recall notice, seniority breaks ties, etc....

SB 1257 – Domestic Workers Covered by CalOSHA

- Extends CalOSHA's jurisdiction to household domestic workers to make sure they have safe & healthy workplaces
- Authorizes CalOSHA to establish safe workplace standards for household domestic workers
- Authorizes CalOSHA to use inspection warrant to get into and inspect homes about which complaints are filed



NEW IMMIGRANT PROTECTION LAWS

SOME THINGS ARE GETTING BETTER!!

AB 3228 – Accountability in Detention Act

- California has 5 immigrant detention facilities; 4 private for-profit
 - Expected to hold as many as 7200 immigrants at a time in 2021
- This law requires facilities to abide by all standards in their contracts; particularly health & safety standards in re Covid-19
- Provides private right to sue if any rights violated w/attorney's fees

AB 3133 – Refugee Resettlement

- Federal law allows any State or locality to refuse to resettle refugees
 - Provides Secretaries of State & HHS will establish rules re whether State or locality has refused
- This law says no refugee can be refused resettlement in California based on race, religion, ethnicity, sexual orientation or any other discriminatory category in California's anti-discrimination statute (Gov Code 1135)

AB 2426 – Victim Protection

- If an immigrant is a victim of certain crimes, and may be helpful in prosecuting crimes, victim shall be allowed to remain in US w temporary benefits
 - (rape, torture, human trafficking, domestic violence, sexual assault, blackmail, stalking, murder or manslaughter, involuntary servitude, etc)
- This law adds 2 things:
 - UC, Cal State U& school district police can certify ‘victims’ to stay
 - Cannot refuse to certify just because case has closed

AB 2113 – Professional Certification

- Provides for *expedited* professional certification procedures for refugees, asylum seekers, special immigrant visa holders
- Certifications for professions like:
 - Nursing, dentistry, technicians (lab, dental, medical, etc.)
 - Lawyers, doctors, accountants
 - Etc.

AB 2788 – Utility Usage Information

- Law already prohibits disclosure of gas, electricity usage to third parties without customer approval
- This law adds that this covers “immigration authorities”, too
- No disclosure of usage to ICE, etc. of utility usage
- Except if proper judicial warrant or Court subpoena

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